

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

JOHN A. PARKINS, JR.

JUDGE

NEW CASTLE COUNTY COURTHOUSE
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**Re: James McGrath and Sheila McGrath v. Christopher Acton
and The Travelers Indemnity Company
C.A. No. 07C-06-322 JAP**

Submitted: March 10, 2009

Decided: March 17, 2009

On Defendant Christopher Acton's Motion for Summary Judgment as to
Plaintiff's Negligence
DENIED.

Dear Counsel:

The material facts pertinent to this motion are undisputed. Plaintiff James McGrath pulled up on his bicycle alongside the driver's side of a car operated by Defendant Christopher Acton. Acton's car was running but

stopped in the middle of Atlantic Avenue in Bethany Beach. McGrath and Acton had a conversation for a few minutes, during which McGrath had both of his feet on the pedals of the bike and his right arm extended with his right hand rested on top of Acton's car for balance. At some point, Acton accelerated his car and McGrath fell to the ground, sustaining injuries.

Acton alleges that McGrath was negligent *per se* at the time of the incident. In support of his contention, Acton relies on 21 *Del. C.* § 4195, which states:

No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or personally be attached to any vehicle upon a highway.

In response, McGrath contends that (1) he was not “attached” to the vehicle at the time of the incident, (2) he was not “riding” a bicycle at the time of the incident, and (3) the statute has no applicability because it was intended to prevent children from dangerous joy riding.

Section 4195 does not define the word “attach.” Where the language of the statute is unambiguous, however, no interpretation is required and the plain meaning of the words controls.¹ The term “attach” means “to make fast (as by tying or gluing)”²; “to fasten by sticking, tying, etc.”³; “to fasten,

¹ *Ingram v. Thrope*, 747 A.2d 545, 547 (Del. 2000) (noting that “[d]ictionary definitions of undefined terms can be useful in construing statutes).

² Merriam-Webster's Online Dictionary (11th ed.).

³ Webster's New World College Dictionary (4th ed.).

secure or join.”⁴ It is clear that the word “attach” means something more than simply touching; rather, it implies some sort of fastening. The parties do not dispute the fact that McGrath’s hand was merely resting on top of Acton’s vehicle. Under the plain meaning of the statute, therefore, McGrath was not attached to Acton’s vehicle and he did not violate § 4195.⁵

Because McGrath was not “attached” to Acton’s vehicle, § 4195 is not applicable to this case. At trial, however, the jury will be free to consider whether McGrath was contributorily negligent under common law principles.

IT IS SO ORDERED.

Very truly yours,

cc: Prothonotary

⁴ The American Heritage Dictionary of the English Language (4th ed.).

⁵ Accordingly, the Court need not determine whether McGrath was “riding” his bicycle at the time of this incident or whether the legislature intended § 4195 to be applied to the circumstances of this case.